IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5276 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHENDRAKUMAR GUPTA PARTNER OFWESTERN INDIA GUM INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5276 of 2000

MR MJ BUDDHBHATTI with MR JM BUDDHBHATTI for the Petitioner

MR N.D.GOHIL, APP for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/06/2002

ORAL JUDGEMENT

In this petition which is filed under Section 482 of the Code of Criminal Procedure , 1973 ('the Code' for

short), the petitioner seeks to challenge the issuance of process against him in Criminal Case No. 1252 of 2000 filed in the Court of the learned JMFC, Dahod, for commission of the alleged offence under Section 138 of the Negotiable Instruments Act ('the Act' for short) and has therefore, prayed for quashing the criminal complaint and process issued thereon, on the grounds stated in the petition.

2. The main ground sought to be canvassed is that the complaint is premature as the same is filed within a period of 10 days only on service of notice to the petitioner. The complainant ought to have waited for 15 days which is a statutory period under Section 138 (3) of the Act. The second ground which is sought to be canvassed is that for three cheques issued by the petitioner to the complainant - respondent no.2, only one complaint is filed. Therefore, also, complaint is not tenable and, therefore, it is prayed that the Criminal complaint bearing No. 1252 of 2000 be quashed and issuance of process be also quashed.

3. Having heard Mr. M.J.Budhabbati, learned advocate for the petitioner and Mr. N.D.Gohil, learned APP for respondent No.1 State of Gujarat and Mr. M.R.Shah, learned advocate for respondent No.2 - original complainant and, on perusal of the averments made in the memo of the petition, grounds set out therein as also the averments made in the criminal complaint No. 1252 of 2000, I am of the opinion that all the contentions which have been raised by the petitioner in this petition can well be raised before the learned Magistrate before whom criminal complaint No. 1252 of 2000 is pending for inquiry and trial, therefore, I am not inclined to entertain this petition on the ground of so called technical defects only.

4. Seen in the above context, there is no valid reason or justifiable ground to interfere with the issuance of process by the learned Magistrate on criminal complaint No. 1252 of 2000 fled by respondent No.2 against the petitioner. The petition is therefore, deserves to be dismissed.

5. For the foregoing reasons petition fails and accordingly it is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated.

6. It would be open for the petitioner to raise similar contentions which he has raised in this petition before the concerned Magistrate, which shall be decided

in accordance with law.

(A.M.Kapadia,J)

Jayanti*